



NADYA LAMBERT,  
ATTORNEY AT LAW, P.C.

**WWW.NADYALAMBERT.COM**

*General legal assistance:*

We have considerable experience in general practice and can offer assistance with the myriad legal issues that individuals face. We have represented individuals in a cross-section of legal issues such as; professional licensing issues, real estate disputes, contractual disputes, arbitration proceedings, and insurance claims for both property damage and personal injury.

*Assistance with the following estate planning needs:*

- Trusts (link- see below)
  - Revocable (also known as living or intervivos trusts)
    - Simple and complex including tax planning
  - Testamentary trusts
  - Tax-Saving Trusts
  - Marital deduction trusts
  - Estate tax avoidance
  - Asset protection
  - Irrevocable trusts
    - Irrevocable life insurance trusts
    - Charitable remainder trusts
- Wills
  - Simple and complex including tax planning and/or testamentary trusts
- Powers of Attorney
  - Medical
  - Financial
- Living wills
- Declarations as to the disposition of last remains, and funeral/memorial directives

*Assistance when a loved one has passed:*

- Intestacy Proceedings (individual has died without a will) and probate litigation (individual has died with a will)
  - Will contests
  - Petitioning for appointment of a personal representative (executor)
  - Addressing any claims brought against the decedent's estate
- Estate administration
- Trust administration

*Assistance when a loved one has become incapacitated:*

- Petitions to appoint a guardian and/or conservator

***Revocable Trusts:***

(Also known as living trusts or intervivos trusts) are the most effective and comprehensive mechanism to:

- Avoid expensive and time consuming probate proceedings in the event of death while maintaining total management and control of assets;
- Avoid expensive and time consuming conservatorship proceedings (to manage your finances) in the event of incapacity. The cost of establishing a trust can be marginal compared to the cost of probate/intestacy and/or guardianship/conservatorship proceedings;
- Avoid liquidity problems for your family upon death. If estate taxes are due, payment is required within 9 months of death regardless of the liquidity of the estate. If, for example, an individual has significant assets tied up in real estate, the heirs may be forced to sell the real estate to pay the IRS regardless of the market conditions;
- Ensure that your family has immediate access to your assets upon your death without the delay of intestacy or probate proceedings which can tie assets up for months or in some cases, for years;
- Ensure privacy in the distribution of your estate. Intestacy/Probate proceedings are public; an inventory of your assets must be filed publicly allowing the world to see what your assets are and who will receive them;
- Enable the distribution of your estate unequally as opposed to equally if that is what you choose. Only the trustee will know how your estate is distributed, which can avoid hard feelings. Also, the risk of a challenge to an estate distribution based on trust documents as opposed to one based on will documents is significantly less;
- Avoid the need for ancillary probate. Probate is required in the state of domicile of the deceased as well as wherever else real estate is located. If all the assets, including the real estate, are held by a trust, significant legal expenses and inconvenience can be avoided;
- Provide some protection from creditors.

***Testamentary Trusts:***

Testamentary trusts come into existence upon death, unlike a revocable trust which comes into existence before death. Testamentary trusts are typically used to manage assets for minor children until they are old enough to competently manage their own finances. By law, a child is able to receive unfettered management and control of assets left to him/her at age 18. Testamentary trusts provide a mechanism whereby the funds can be managed by a trustee until the child reaches a more mature age than 18. Testamentary trusts are often used as a conduit for life insurance proceeds which, in the absence of a trust, must be distributed to the child at age 18. In a testamentary trust, the assets can be managed by a trustee for the benefit of minor children until they reach a more mature age and are able to handle the management of large sums of money.

### ***Tax saving Trusts:***

When you die, if your “taxable” estate falls beyond a certain dollar amount and tax is due, the IRS expects payment within 9 months of your death, regardless of the liquidity of your estate. In 2008 the relevant dollar amount is \$2,000,000. In 2009 the dollar amount is \$3,500,000. If during these two years your “taxable” estate exceeds these dollar limits, you owe estate tax on whatever amount exceeds these numbers at a rate of 45% (i.e. on a \$1.1 million dollar estate, \$45,000 would be due and payable). In 2010 the federal estate tax has been repealed. In 2011, the Economic Growth and Tax Relief Reconciliation Act of 2001 to which these declining numbers are attached, will be repealed unless the incoming administration renews the act. If repealed, the relevant taxable estate number will be \$1,000,000, of which any amount over that number will be taxed at 55%. Most people underestimate the value of their current and future estates and believe estate tax planning is not applicable to them. Unfortunately almost all assets are included in the “taxable estate” including the value of life insurance policies.

Tax planning trusts can take the dollar amount that would otherwise be taxable (up to certain limits) and remove it from your or your spouse’s estate. Your spouse can have access to these funds for his/her health, education, maintenance, and support, with funds that would otherwise have gone to the IRS.

### ***Marital Deduction Trusts (AB Trusts):***

When you die, if your “taxable” estate falls beyond a certain dollar amount, estate tax is due within 9 months of your death, *regardless of the liquidity of your estate*. In 2008 the relevant dollar amount is \$2,000,000. In 2009 the dollar amount is \$3,500,000. If during these two years your estate exceeds these dollar limits, you owe estate tax on whatever amount exceeds these numbers at a rate of 45% (i.e. on a \$1.1 million dollar estate, \$45,000 would be due and payable). In 2010 the federal estate tax has been repealed. In 2011, the Economic Growth and Tax Relief Reconciliation Act of 2001 to which these declining numbers are attached, will be repealed unless the incoming administration renews the act. If repealed, the relevant taxable estate number will be \$1,000,000, of which any amount over that number will be taxed at 55%.

Marital deduction trusts can take *the dollar amount that would otherwise be taxable (up to certain limits)* and remove it from your estate. This avoids estate tax upon your death and allows for the funds to be placed in a trust for your spouse and/or dependents. This enables them access to funds that would otherwise have gone to the IRS and instead can be used for their benefit.

**\*NOTE:** Your “taxable” estate more often than not will include the proceeds of your life insurance policy.

### ***Irrevocable Trusts:***

Irrevocable Trusts are designed to remove assets from a taxable estate *while achieving significant tax deductions* with funds that would otherwise be payable to the IRS. Irrevocable trusts can be used to fund a child’s education; to make charitable contributions; to create income for individuals who are real estate rich but income poor; or to meet divorce obligations vis-à-vis the support of children.

### ***Wills:***

A will is a basic estate planning tool to ensure that the court will honor your wishes as to the distribution of your property upon death. In the absence of a will, the court will look to the intestacy statute to determine the distribution of your estate. A will *does not* avoid probate, but it can incorporate the benefits of testamentary trusts and tax avoidance planning after the assets have been probated.

### ***Powers of Attorney:***

Financial powers of attorney enable the agent that you have nominated to manage your assets in the event of your unavailability or incapacity.

Medical powers of attorney enable the agent that you have nominated to make medical decisions on your behalf in the event of your incapacity. Both documents are necessary to avoid court proceedings to appoint a guardian and/or conservator if you experience an incapacitating medical event.

### ***Living Wills:***

A Living Will is a document in which a person specifies the condition wherein the person’s life shall not be artificially extended by the use of life-sustaining procedures or substances, and where the person shall be permitted to die in the normal course of events. These documents can be helpful for individuals anticipating conflict among family members if these decisions need to be made.

### ***Declarations as to Disposition of Last Remains and Funeral/Memorial Directives:***

These documents enable you to specify your wish to be cremated or buried, and to specify the type of service, funeral, or memorial you desire. These documents are

particularly useful for individuals anticipating conflict among family members when the time comes for these decisions to be made.